

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

LORENZO GUARINO, )  
Plaintiff )  
 )  
v. )  
 )  
R.W. GRANGER & SONS, INC. and ) C.A. NO.: 04-10246  
SCAVONE C&M CONSTRUCTION CO., INC., )  
Defendants )  
 )  
and )  
 )  
R.W. GRANGER AND SONS, INC., )  
Defendant/Third-Party Plaintiff )  
 )  
v. )  
 )  
SCAVONE C & M CONSTRUCTION CO., )  
INC., and FENESTRATION ARCHITECTURAL )  
PRODUCTS, INC., )  
Third-Party Defendant )

**STIPULATION AND JOINT MOTION TO WITHDRAW THIRD PARTY  
DEFENDANT, FENESTRATION ARCHITECTURAL PRODUCTS, INC.'S MOTION  
TO DISMISS THIRD PARTY COMPLAINT (DOCKET ENTRY # 56)**

The third party defendant, Fenestration Architectural Products, Inc. (“Fenestration”), and the third party plaintiff, R.W. Granger and Sons, Inc. (“R.W. Granger”), hereby stipulate and jointly move that the Third Party Defendant’s Motion to Dismiss pursuant to Fed.R.Civ.P. 37(b)(2)(C) be, and hereby is, *withdrawn*, without prejudice.

In support of this motion, the parties state that subsequent to the filing of the Motion to Dismiss counsel for R.W. Granger and Fenestration came to an agreement wherein complete versions of the general contract and sub-contract at issue in this matter were produced. At this juncture, therefore, it appears that the basis for Fenestration’s motion (the failure of R.W. Granger to provide copies of those documents) has been satisfied, making the motion to dismiss

unnecessary. Thus, the parties mutually recognize that a Motion to Dismiss for failure to proceed with discovery will not be necessary at this time. By so stipulating, R.W. Granger in no way concedes that it was delinquent in its discovery obligations or in violation of any Court orders concerning discovery. Accordingly, the parties have stipulated, and respectfully jointly move, that this Court record the withdrawal of Fenestration's pending Emergency Motion to Dismiss pursuant to Fed.R.Civ.P. 37(b)(2)(C) (Docket Entry # 56).

**BY STIPULATION AND JOINT MOTION:**

The Third-Party Defendant,  
Fenestration Architectural Products, Inc.  
By Its Attorney

/s/Robert H. Gaynor  
Robert H. Gaynor  
BBO # 187620  
SLOANE AND WALSH, LLP  
Three Center Plaza  
Boston, MA 02108

The Third-Party Plaintiff,  
R.W. Granger and Sons, Inc  
By Its Attorney,

/s/ Patrick McCormack  
Patrick McCormack  
BBO#  
Law Office of Jacqueline L. Allen  
One Liberty Square, 12<sup>th</sup> Floor  
Boston, MA 02109

Dated: April 13, 2007

**CERTIFICATE OF SERVICE**

I, Robert H. Gaynor, attorney for the Third Party Defendant, Fenestration Architectural Products, Inc., do hereby certify that I caused the preceding document to be served electronically on this day to the following counsel of record:

Frank C. Corso, Esq.  
492 Winthrop Street  
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Patrick McCormack, Esq.  
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/s/Robert H. Gaynor

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